

## **1 HEADING PLACEHOLDER – DO NOT DELETE**

## **2 HEADING PLACEHOLDER – DO NOT DELETE**

## **3 HEADING PLACEHOLDER – DO NOT DELETE**

## **4 SELECTING A RESTORATION OR REHABILITATION APPROACH**

### ***4.1 Heading Placeholder – Do Not Delete***

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### ***4.6 Potential Permit Requirements for Project Implementation***

Local, state, and federal permits may be required for all restoration activities, especially for those implemented in or around streams. The type of impacts that a project may generate and the location of the project will determine which permits may apply. The Washington Department of Ecology's Permit Assistance Center can help project proponents determine which state and federal environmental permits are needed for their proposed activity. The Permit Assistance Center may be reached by phone at 360-407-7037 or (800) 917-0043, or on line at <http://www.ecy.wa.gov/programs/sea/pac/index.html>. The Washington Department of Ecology also publishes *The Permit Handbook: Commonly Required Environmental Permits for Washington State* that is available on line at the above web address. Contact the city or county in which you want to conduct the activity for information on local permits that may be required.

Consulting with permitting agencies early on in the project planning process can help to ensure all necessary permits are obtained before work begins. Early consultation may prevent construction delays and help to develop a better project. The longer permitting agency involvement is delayed, the more likely the project will be rejected or will require design modification in order to proceed.

Permits all require a review process that takes time to complete. Some reviews are relatively fast (less than a month) while others may take several months. The sometimes lengthy permit process, combined with the relatively short allowable work period for many types of construction projects, should be carefully considered when developing schedules for project planning, design, and construction. Project proponents must plan ahead, especially when time sensitive grant monies are utilized. In addition to time, many permits are also subject to fees. Fees for some permits may be a flat rate, while others are a percentage of the project's total value.

The discussion below is intended to familiarize the reader to the permitting process. The information provided and the specific permits required are subject to change. Contact the appropriate permitting agencies for the most accurate and current information.

#### *4.6.1 How the Endangered Species Act Effects Project Permitting*

Recent listings of several fish species in the Pacific Northwest under the Endangered Species Act (ESA) has added further complexity to obtaining permits for work in or around streams. ESA applies to everybody subject to the jurisdiction of the United States, including state and federal agencies, cities, counties, tribes, and individuals. Compliance with ESA means not violating “take” prohibition that is in effect for all fish and wildlife species listed as threatened or endangered. “Take” is defined as to “harass (annoy it to such an extent as to significantly disrupt normal behavior patterns such as breeding, feeding, or sheltering), harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct”(ESA Section 3[19]). The National Marine Fisheries Service (NMFS) and U.S. Fish & Wildlife Service (USFWS) have the responsibility of ensuring that proposed activities will not jeopardize the continued existence of a listed species, or destroy or adversely modify their critical habitat (NMFS 1999). NMFS has jurisdiction over all fish and wildlife species whose life cycles reside mainly in the marine environment. USFWS has jurisdiction over inland and terrestrial species of fish and wildlife whose life cycles reside mainly outside the marine environment.

Consultation with NMFS and/or USFWS is required for all activities that may positively or negatively affect any listed fish or wildlife species. The goal of consultation is to assess the potential impacts of the proposed activity on listed species, and if take is likely, to modify the activity to prevent, minimize, and mitigate impacts to listed species. Consultation with NMFS and USFWS may proceed in one of two ways. A Section 7 consultation is required whenever a federal nexus exists for a project; that is, for all activities carried out, funded, or permitted by a federal agency. In a Section 7 consultation, the federal agency responsible for constructing, funding, or permitting the project will be responsible for consulting with NMFS and/or USFWS, as appropriate. That federal agency is referred to as the “action” agency. A Section 10 consultation is required if no federal nexus exists. In a Section 10 consultation, the project sponsor will be responsible for directly consulting with NMFS and/or USFWS, as appropriate.

A Section 7 consultation proceeds in the following manner. A Biological Assessment (BA) must be prepared; either by the action agency, or by the applicant and provided to the action agency for edit and review. (Limiting the action agency’s involvement to a review may significantly speed up the BA process.) Three possible determinations may be made by the action agency (NMFS 1999):

1. “No effect” indicates there is no probability of any effect on listed species by the proposed activity. A “no effect” determination does not require NMFS or USFWS review.
2. “May affect, not likely to adversely affect” indicates the proposed activity does not have the potential to hinder the attainment of relevant properly functioning indicators and has a negligible probability of taking proposed or listed species or resulting in the destruction or adverse modification of their habitat. This determination requires informal consultation with NMFS and/or USFWS, resulting in a written concurrence

with the action agency's determination.

3. "May affect, likely to adversely affect" indicates that the proposed activity has the potential to hinder attainment of relevant properly functioning indicators, or has a more than negligible probability of taking proposed or listed species or resulting in the destruction or adverse modification of their habitat. This determination requires formal consultation. NMFS and/or USFWS will conduct a jeopardy analysis and issue a Biological Opinion (BO) regarding whether or not an activity is likely to jeopardize, destroy, or adversely modify critical habitat for proposed or listed species. Following this analysis, NMFS and/or USFWS will either authorize the proposed activity outlining reasonable and prudent measures to minimize the impact of any take, or else suggest reasonable and prudent alternatives to the proposed activity if they exist.

Section 10 of the ESA allows NMFS and USFWS to permit take provided that it is done for scientific research or enhancement purposes or it is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Applicants for an Incidental Take Permit must submit a Habitat Conservation Plan (HCP) to NMFS and/or USFWS for review as appropriate. The HCP must identify at a minimum: 1) the impact of any take associated with the proposed activity, 2) steps that will be taken to minimize and mitigate impacts, 3) available funding, and 4) what alternative actions were considered and why they were not utilized. Following a public comment period regarding the HCP and permit application, NMFS and/or USFWS shall issue an Incidental Take Permit if they find the taking will be incidental, the applicant will minimize and mitigate the impacts of the take, the applicant will ensure adequate funding for the plan will be provided, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Due to the cost and time involved in developing an HCP, a Section 10 consultation will be much more difficult for a private landowner to participate in than a Section 7 consultation where a federal agency handles the consultation.

Section 4d of the ESA allows NMFS and USFWS to issue regulations deemed necessary and advisable to provide for the conservation of threatened species. These regulations may exempt certain activities from take prohibition. Different 4d exemptions may apply to different species or runs of fish. Project proponents should contact NMFS and/or USFWS to find out if their proposed activity is exempt from Section 7 or Section 10 consultation. Note that the 4d exemptions only apply to specific species or runs of fish listed as threatened. They do not apply to species listed as endangered.

Always check with NMFS and USFW even if not working directly in the stream. Fines for an unauthorized take of endangered and threatened species are very expensive!

#### **4.6.2 Commonly Required Permits and Checklists**

The following text describes the most commonly required permits and checklists when implementing stream habitat restoration activities. The information provided is a summary of that provided in *The Permit Handbook: Commonly Required Environmental Permits for Washington State* (WA Department of Ecology 1998) where more detailed information is available. Another good source of information is *Guide for the Acquisition of Permits Commonly Needed for Salmon Habitat Restoration or Enhancement Projects in the State of Washington* (Ecocline Fisheries Habitat consulting LTD 2001). It is a comprehensive document

on permit acquisition and provides guidance on the common types of permits required to conduct stream habitat restoration projects, information required for permit applications, the content of environmental review under the State Environmental Protection Act, and compliance with the ESA, including preparation of a biological evaluation or biological assessment.

#### 4.6.2.1 State Environmental Policy Act (SEPA)

SEPA is a process to ensure that environmental values are considered by state and local government officials when making decisions about plans and projects. SEPA is not a permit itself, however, it is triggered whenever a state or local permit is required in order to conduct a proposed activity. The “lead” agency that is being asked to issue a permit will ask the applicant to fill out an Environmental Checklist. The lead agency will vary, depending upon the permits required. If a local permit is required, the local city or county will be the lead agency. If no local permits are required but a state permit is required, the state will be the lead agency.

Once the environmental checklist is submitted, the lead agency will either:

1. Issue a determination of nonsignificance (DNS) indicating that, in their opinion, the project will not have a significant adverse environmental impact. Other agencies issuing a permit will have a 14-day comment period, after which permit processing can proceed if no further concerns are raised.
2. Issue a Mitigated DNS meaning that the project may have some significant impacts but that these can be avoided or minimized by modifying the activity. Agencies will have a 14-day comment period, then permit processing can proceed on the modified project if no further concerns are raised.
3. Determine that an environmental impact statement (EIS) is required. This indicates that the project will have a “probable significant adverse environmental impact”. EISs are documents that identify potentially harmful environmental effects of the project, as well as ways to minimize and mitigate for the negative effects.

#### 4.6.2.2 National Environmental Policy Act (NEPA)

NEPA is a similar process to SEPA that applies to federal agencies making decisions regarding permits or licenses. It is triggered whenever a project receives federal funding or if any federal permits are required. NEPA requires that an environmental assessment be used by the lead agency to determine the extent of environmental impacts associated a project. Response of the lead agency may be:

1. Issuance of a finding of no significant impact (FONSI) indicating that a project will not significantly impact the environment.
2. Determination that an environmental impact statement (EIS) is required as the project is determined to be environmentally significant.

Participation in either the NEPA or SEPA process does not exempt a project proponent from participation in the other process. However, a state or local agency may adopt a NEPA document as a SEPA document if the original document is found to be adequate.

#### 4.6.2.3 Joint Aquatic Resource Permits Application (JARPA)

The JARPA is a consolidated application that can be used for all types of water related projects. Each agency reviewing the JARPA application has its own review period and fee schedule for permit issuance. Contact the local city or county planning office before submitting a JARPA

application to them as not all local government agencies use JARPA.

The JARPA application may be used to apply for the following permits:

- *Hydraulic Project Approval (HPA)*  
Required for any form of work that uses, diverts, obstructs, or changes the natural flow or bed of state waters. This approval is issued by the WA Department of Fish and Wildlife.
- *Shoreline Management Act Permit (including Substantial Development, Conditional Use, Variance Permit, or Exemption)*  
Required for any development or activity valued at \$2,500 or more that is located on the water or shoreline area. It is also required for any use or activity that interferes with normal public use of water/shorelines of the state regardless of cost, and uses that constitute a conditional use or variance under the local master program. Shorelines are lakes, including reservoirs, of 20 acres or greater; streams with a mean annual flow of 20 cfs or greater; marine waters; plus an area landward for 200 feet measured on a horizontal plane from the ordinary high water mark; and all associated marshes, bogs, swamps, and river deltas. Floodplains and floodways incorporated into local shoreline master programs are also included. This permit is issued by the local city or county government.
- *Flood plain Management Permits and/or Critical Areas Ordinances*  
Required for work (including development as well as for filling or grading activities) in frequently flooded areas, geologically unstable areas, wildlife habitats, aquifer recharge areas, and wetlands. This permit is issued by the local city or county government.
- *Section 401 of the Clean Water Act Water Quality Certification*  
Required of any applicant for a federal license or permit to conduct any activity that may result in any discharge into surface waters. This includes the discharge of dredge and fill material into water or wetlands. A 401 Certification is required whenever a Corps of Engineer's 404 permit is required. This certification, stating that the discharge complies with federal and state law requirements, is issued by the WA Department of Ecology.
- *Section 404 of the Clean Water Act Permit: Discharge of Dredge and Fill Material*  
Required when placing a structure, excavating (including land clearing), or discharging dredged or fill material into waters of the United States, including wetlands. The Section 404 permit is issued by U.S. Army Corps of Engineers.
- *Section 10 of the Rivers and Harbors Act Permit: Work in Navigable Waters*  
Required for any work in or affecting navigable waters of the United States, including wetlands. This permit is issued by U.S. Army Corps of Engineers
- *Section 9 of the Rivers and Harbors Act Permit*  
Required for construction of a new bridge or modification to an existing bridge over a navigable waterway. This permit is issued by the Coast Guard.

Two alternative JARPA permits are currently available that simplify the process for securing permits for fish habitat enhancement and watershed restoration projects. They are:

### **1. Streamlined Process for Fish Habitat Enhancement Projects Addition to the JARPA**

Qualifying projects are entitled to a streamlined HPA process, and will be exempt from SEPA as well as from all local government permits and fees. However, qualifying projects are still subject to state and federal permits and their review schedules and fees. WA Department of Fish and Wildlife must approve or deny the HPA or make a determination that the proposed work

does not qualify for the streamlined HPA process within 45 days.

To qualify for the fish habitat enhancement exemption, projects must accomplish one or more of the following:

- Removal of human-made fish passage barriers; or
- Restoration of an eroded or unstable stream bank using bioengineering techniques; or
- Placement of woody debris or other in-stream structures that benefit natural reproducing fish stocks.

and must be approved in one or more of the following ways:

- By WA Department of Fish and Wildlife, through the Salmon Enhancement, or Volunteer Cooperative Fish and Wildlife Enhancement Programs,
- By the sponsor of a watershed restoration plan as provided in chapter 89.08RCW,
- By WA Department of Fish and Wildlife, as a department-sponsored fish enhancement or restoration project,
- Through the review and approval process for Conservation District sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the U.S. Fish and Wildlife Service and the Natural Resource Conservation Service, or
- Through a formal grant program established by the legislature or the WA Department of Fish and Wildlife for fish habitat enhancement or restoration.

## **2. Expedited Permit Application for Watershed Restoration Projects (to be submitted with JARPA)**

The expedited permit application has two parts: the expedited form and the JARPA application. The expedited process is more than an application. It coordinates government review, specifying that complete applications must be processed in 45 days at no charge to the applicant. Qualifying projects are exempt from needing a Substantial Development Permit, but they may still need a Conditional Use Permit or variance under the local shorelines master program.

The expedited process may only be used for projects designed to enhance fish and wildlife habitat. To qualify, a project must:

- Be part of a watershed restoration plan which has undergone public review pursuant to SEPA requirements;
- Be principally designed to enhance fish and wildlife habitat;
- Meet one of the following criteria:
- A project that affects less than 10 miles of stream reach, in which <25 CY of sand, gravel or soil is imported, removed, or disturbed, and in which no existing vegetation is removed except as necessary to facilitate additional plantings;
  - A project for the restoration of an eroded or unstable streambank that employs the principles of bioengineering and has a primary emphasis on using native vegetation;
  - A project primarily designed to improve fish and wildlife habitat by removing or reducing impediments to migration of fish or enhancing the fishery resource available for use by all citizens of the state, provided that any structure associated with the project is less than 200 SF in floor area and is located above the ordinary high water mark of the stream.

Contact your local conservation district or the Conservation Commission for more information regarding the expedited permit process.

### *4.6.3 Other Permits That May Apply*

#### 4.6.3.1 Forest Practices Approval

Required before beginning any forest practice (harvesting, reforestation, road construction/abandonment, fertilization, prevention, and suppression of diseases and insects, tree salvage, brush control, and/or chemical application). This permit is issued by the WA Department of Natural Resources.

#### 4.6.3.2 Coastal Zone Management Certification (CZM)

Required for U.S. Army Corps of Engineers authorized projects, and/or when applying for certain federal permits or funding. The certification is prepared by the project proponent. The WA Dept of Ecology reviews the certification and the proposed project for compliance with state environmental requirements.

#### 4.6.3.3 Noxious Aquatic and Emergent Weed Transport Permit

Required for transporting whole or parts of various plants that have been designated as noxious weeds by the Washington State Noxious Weed Control Board. The permit is issued by the Director of Agriculture.

#### 4.6.3.4 Short-term Water Quality Modification

Required for the use of aquatic herbicides or pesticides, including those used to control noxious and non-noxious aquatic plants. The permit is issued by the WA Department of Ecology.

#### 4.6.3.5 Stormwater Discharges from Construction Sites

Required for construction that disturbs five or more acres. This permit is issued by the WA Department of Ecology.

#### 4.6.3.6 Hazardous Waste Release Notification

The WA Department of Ecology must receive prompt notification of any spills or releases of hazardous substance that occur that have the potential to impact human health or the environment. This includes spills resulting from breaks in the hydraulic lines and fuel hoses of construction equipment.

#### 4.6.3.7 Archeological Excavation Permit

Required when excavating altering or removing archaeological resources or Native American grave sites. This permit is issued by the WA Department of Community Development, Office of Archaeology and Historic Preservation. Historic settlements were often located near waterways.

#### 4.6.3.8 Commercial Pesticide Operator/ Applicator License

Required if applying pesticides (including herbicides, insecticides, etc) to the land of another. A person may become certified by passing the exam requirements established by the Washington State Department of Agriculture. In addition, permits may be required for applying certain pesticides.

#### 4.6.3.9 Other local permits

These may include Clearing and Grading Permits, and permits required for compliance with Critical Areas Standards, etc. Critical areas are locally designated wetlands, geological hazard areas, aquifer recharge areas, fish and wildlife habitat conservation areas, and frequently flooded areas.

#### 4.6.4 *References*

Ecocline Fisheries Habitat Consulting LTD. 2001. Guide for the Acquisition of Permits Commonly Needed for Salmon Habitat Restoration or Enhancement Projects in the State of Washington. Prepared for People for Salmon, North Bend, Washington. pp158.  
<http://www.peopleforsalmon.org/permits.html>

National Marine Fisheries Service (NMFS). 1999. The Habitat Approach: Implementation of Section 7 of the Endangered Species Act for Actions Affecting the Habitat of Pacific Anadromous Salmonids. National Marine Fisheries Service, Northwest Region, Habitat Conservation and Protected Resources Division. pp.12

Washington Department of Ecology. 1998. Permit Handbook: Commonly Required Environmental Permits for Washington State. Publication Number 90-29. pp75.  
<http://www.ecy.wa.gov/programs/sea/pac/index.html>.